

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Comment Sought on Competitive Bidding)	AU Docket No. 18-85
Procedures for Auctions 101 (28 GHz) and 102)	
(24 GHz))	

COMMENTS OF THE BLOOSTON RURAL CARRIERS

The law firm of Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP, on behalf of its rural and independent telephone, wireless service provider and wireless user clients that have interests in developing and deploying rural 5G networks and services (the “Blooston Rural Carriers”),¹ hereby submits comments on procedures to be used for its upcoming auctions of Upper Microwave Flexible Use Service (UMFUS) licenses in the 27.5–28.35 GHz (28 GHz) and 24.25–24.45 and 24.75–25.25 GHz (24 GHz) bands (collectively, the UMFUS bands).²

The Blooston Rural Carriers applaud the Commission for its efforts to make these “millimeter wave” (“mmW”) spectrum bands available for bidding and licensing as quickly as possible and support the Commission’s proposed auction procedures generally. However, with respect to the timing of these two auctions, the FCC must avoid scheduling these two proceedings in a manner that results in the filing window for the 24 GHz auction (Auction 102) occurring prior to the close of bidding in the 28 GHz auction (Auction 101). This will preclude many small and rural carriers that may be inclined to bid on their own for county-based 28 GHz licenses from being able to pursue strategic partnerships and/or consortia that will likely be necessary for capital formation and bidding on the larger 24 GHz PEA licenses. This could depress auction participation and result in a significant number of licenses

¹ Blooston clients include several rural local exchange carriers, providers of for profit wireless services, and users such as alarm service providers Vector Security and Supreme Alarm.

² See Auctions of Upper Microwave Flexible Use Licenses for Next-Generation Wireless Services, Comment Sought on Procedures for Auctions 101 (28 GHz) and 102 (24 GHz), *Public Notice*, FCC 18-43 (*rel.* April 17, 2018) (*UMFUS Auction Procedures Notice*).

(especially licenses for rural areas) going unsold. The Commission has an obligation under Section 309(j) of the Communications Act, as amended (the “Act”) to ensure that its design and use of competitive bidding promote economic opportunity and competition by disseminating licenses among a wide variety of applicants, including small businesses and rural telephone companies. Scheduling two auctions of similar mmW spectrum licenses in an overlapping time frame would create undue complications and limit auction participation by Designated Entities (DEs), in contravention to the Act. It would also create confusion under the Commission’s prohibited communications rules and prevent small and rural service providers and entrepreneurs from being able to pursue a reasonable back up strategies if they are not successful in obtaining the license rights they seek in the initial 28 GHz auction. The “race to 5G” is not a race to be won for its own sake. For this reason, the Blooston Rural Carriers respectfully submit that adopting a sensible mmW auction schedule that does not hinder a significant segment of the industry from being able to pursue alternative business strategies would better serve the public interest. Further comments of the Blooston Rural Carriers on the Commission’s proposed procedures for Auctions 101 and 102 follow below.

The FCC is proposing that the 28 GHz band auction would follow standard simultaneous multiple-round (SMR) auction format. The Blooston Rural Carriers support this proposal for a band where licenses will not be available in all counties or in many major markets due to incumbent licensing. Standard SMR procedures make sense for the county-based 28 GHz licenses because they are straightforward and easy for small carriers and entrepreneurs to understand. This will encourage participation by the largest number of small and rural service providers and facilitate the quickest and least complicated auction methodology for relatively small geographic areas. In contrast, the FCC is proposing that its auction of 24 GHz band licenses (Auction 102) would employ a clock auction format. Under this approach, the first phase of the auction will consist of successive clock bidding rounds for generic license blocks in specific geographic areas (with the price of all license blocks rising in unison so long as there is more demand than supply), and the second phase will consist of bidding rounds for frequency-specific license assignments. Clock bidding procedures were used successfully in the 600

MHz forward auction portion of the Broadcast Incentive Auction, and make sense where channel blocks are largely interchangeable.

However, with respect to the timing of the two auctions, the FCC seeks comment on whether it should accept applications to participate in Auction 101 and/or 102 during separate filing windows, and seeks comment on whether the filing window for Auction 102 should occur prior to the close of bidding in Auction 101. While it may be efficient for large companies that are bidding for themselves and that assemble auction “teams” to simultaneously manage their bidding and application process for two auctions, the Blooston Rural Carriers believe this would lead to financial and administrative difficulties for smaller bidders and rural service providers. Notably, if the filing window for Auction 102 opens before the close of Auction 101, applicants in both Auctions 101 and 102 would be subject to overlapping “prohibited communications” periods. This could preclude discussions between small companies that may wish to bid for themselves for county-based licenses available in Auction 101 and potential partners or consortia that may be needed for bidding on the larger PEA-based licenses in Auction 102. Budgets are limited, and understanding what resources a small carrier may have to commit to a joint 24 GHz effort won’t be known until after the 28 GHz auction is complete. Delaying the Auction 102 filing window until after Auction 101 closes would give applicants an opportunity to talk and finalize planning and financing arrangements between the two auctions. While this would delay the start of bidding in Auction 102, delay of just a few months shouldn’t appreciably delay the development or rollout of new 5G services for which equipment is only now being developed. The Commission has an obligation under Section 309(j)(3) of the Act to ensure a manageable auction process for small and rural carriers and other DEs. *Failure to adopt reasonable scheduling for two significant auctions of 5G spectrum would unduly complicate matters for small and rural carriers and entrepreneurs and preclude these DEs from initial mmW licensing opportunities.*

The FCC seeks comment on its proposal to require applicants to submit upfront payments based on \$0.001 per megahertz of bandwidth per population (per “MHz-POP”) as a prerequisite to becoming a

qualified bidder. As in previous auctions, the agency proposes that the amount of the upfront payment will determine the applicant's initial bidding eligibility—assigning one bidding unit (BU) per dollar of upfront payment. The FCC also proposes to establish minimum opening bid amounts on a license-by-license basis using a \$0.002 per MHz-pop calculation. The Blooston Rural Carriers support the Commission's proposed upfront payment and minimum opening bid amounts because this may result in relatively low cost for mmW licenses in less populated rural counties. To the extent that IoT products and services may be developed for agricultural and other rural-centric applications, the possibility of low initial licensing costs (which can be further reduced by bidding credits) could make county-based 28 GHz licenses a worthwhile risk for rural entrepreneurs. The same holds true for PEA-sized 24 GHz licenses.

As in previous auctions, the FCC is planning to conduct Auctions 101 and 102 using “limited information” procedures, where the licenses or license areas that an applicant selects for bidding on the short-form application is kept confidential, as well as the amount of the upfront payment, and identity of bidders placing a bid, though bidders would be able to view their own eligibility status via the FCC's Auction Bidding System. The Blooston Rural Carriers are familiar with limited information auctions, which tend to level the playing field among bidders, and support the Commission's proposal to use limited information procedures in Auctions 101 and 102. Likewise, the Commission's auction rules prohibit applicants from discussing bids or bid strategies, or negotiating settlement agreements between the short-form application deadline and post-auction down payment deadline. If the application window for Auction 102 is scheduled before the down payment deadline for Auction 101, entities participating in either auction would be applicants during overlapping periods. The FCC therefore proposes to apply the prohibited communications rule across both auctions—prohibiting an applicant in either auction from communicating bids or bidding strategies to any applicant in either Auction 101 or 102. To facilitate small and rural carrier participation in both auctions, including formulation of cogent bidding strategies, partnerships/consortia, and capital formation, the Blooston Rural Carriers urge the Commission to clearly separate Auctions 101 and 102 and allow bidders and their investors to treat the UMFUS auctions as separate auctions for prohibited communications purposes.

In 2016, the FCC determined that it was appropriate to make small business bidding credits available in UMFUS auctions in conformity with the amended Part 1 rules. Specifically, the Commission determined that an entity with average annual gross revenues for the preceding three years not exceeding \$55 million would be designated as a “small business” eligible for a 15 percent bidding credit, and that an entity with average annual gross revenues for the preceding three years not exceeding \$20 million would be designated as a “very small business” eligible for a 25 percent bidding credit. The Commission further determined that entities providing commercial communication services to a customer base of fewer than 250,000 combined wireless, wireline, broadband, and cable subscribers in primarily rural areas would be eligible for the 15 percent “rural service provider” bidding credit. The Blooston Rural Carriers support the proposed availability of small business and rural service provider bidding credits. As a related matter, the *UMFUS Auction Procedures Notice* seeks comment on a \$25 million cap on the total amount of bidding credits that may be awarded to an eligible small business in each auction. The Blooston Rural Carriers believe this is a reasonable cap because it will prevent deep-pocketed startups from abusing the DE program and potentially running up bid prices for licenses in rural areas. The Commission anticipates that the range of potential use cases suitable for the UMFUS bands, including localized fiber replacement and IoT, combined with the small license areas in these bands, may permit deployment of smaller scale networks with lower total costs. Likewise, the FCC is proposing to adopt a \$10 million cap on the total amount of bidding credits that may be awarded to an eligible rural service provider in Auction 101 and Auction 102. The proposed cap on rural service provider credits should not constrain the ability of legitimate rural service providers to participate fully and fairly in the UMFUS auctions.

CONCLUSION

The Blooston Rural Carriers largely support the Commission’s proposed competitive bidding procedures for mmW spectrum licenses to be made available for bidding this November in Auction 101 and thereafter in Auction 102. However, the Commission has an obligation under Section 309(j) of the Act to ensure that its design and use of competitive bidding promote economic opportunity and competition by disseminating licenses among a wide variety of applicants, including small businesses and

rural telephone companies. Scheduling two auctions of similar mmW spectrum licenses in an overlapping time frame would also create undue complications and confusion under the Commission's prohibited communications rules and prevent small and rural service providers and entrepreneurs from being able to pursue a reasonable back up strategies if they are not successful in obtaining the license rights they seek in the initial 28 GHz auction. This will depress participation in mmW spectrum auctions by a significant segment of the industry and ultimately hinder the potential for development of 5G and IoT services in rural communities and for agricultural and other rural-centric applications.

Respectfully submitted,

**BLOOSTON, MORDKOFKY, DICKENS,
DUFFY & PRENDERGAST**

A handwritten signature in black ink, appearing to read "D. Cary Mitchell", written over a horizontal line.

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